SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1969
No. 768

THE BOYS MARKETS, INC.,

Petitioner,

vs.

RETAIL CLERK'S UNION, LOCAL 770,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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SUBJECT INDEX

	Page
Citations to Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting Writ	6
Conclusion	10

INDEX TO APPENDICES

Appendix A. Statutory Provisions Cited and Quoted	1
Appendix B. Copies of Findings, Conclusions and Orders of United States District Court for the Central District of California	4
Appendix C. Copies of Opinion and Judgment of United States Court of Appeals for the Ninth Circuit	19
Judgment	22

TABLE OF AUTHORITIES CITED

Cases	Page
Avco Corp. v. Aero Lodge 735, I.A.M., 390 U.S. 557	4, 6
Brotherhood of Railway Trainmen v. Chicago River and Indiana Railway Co., 353 U.S. 30	9, 10
Brotherhood of Railway Trainmen v. Howard, 343 U.S. 768	10
Drake Bakeries, Inc. v. American Bakery & Confectionary Workers International Local 50, 370 U.S. 254	8
Graham v. Brotherhood of Locomotive Firemen, 338 U.S. 232	10
International Longshoremen's Association, Local 1291 v. Philadelphia Marine Trade Association, 389 U.S. 64	6
Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Lucas Flour Co., 369 U.S. 95	7
New Orleans Steamship Assn. v. General Longshore Workers, ILA, Local Union No. 1418, 389 F. 2d 369, cert. den., 393 U.S. 828	8
Sinclair Refining Co. v. Samuel M. Atkinson, 370 U.S. 195	2, 5, 6, 7, 8, 9
Textile Workers of America v. Lincoln Mills of Alabama, 353 U.S. 448	7
United Steel Workers of America v. American Manufacturing Co., 363 U.S. 564	7
United Steel Workers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593	7
United Steel Workers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574	7

Page

Virginia Railway Company v. System Federation No. 40, 300 U.S. 515 10

Statutes

Labor-Management Relations Act of 1947, Sec. 301 ..... 2, 3, 6, 9, 10

Norris-LaGuardia Act, Sec. 4 ..... 2, 9, 10

47 Statutes at Large, p. 70 2

61 Statutes at Large, p. 156 2

United States Code, Title 28, Sec. 1254(1) 2

United States Code, Title 29, Sec. 104 2

United States Code, Title 29, Sec. 185 2

United States Code, Title 29, Sec. 185(a) 2

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THE BOYS MARKETS, INC.,
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RETAIL CLERK'S UNION, LOCAL 770,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on September 26, 1969.

Citations to Opinions Below.

The Findings of Fact and Conclusions of Law [R. 112] and the Order Directing That Arbitration Proceed and Order Granting Injunction Pending Arbitration [R. 106] of the United States District Court for the Central District of California, printed in Appendix B hereto, *infra*, pp. 4-18, were not officially reported.[1] The opinion of the Court of Appeals for the Ninth Circuit, printed in Appendix C hereto, *infra*, pp. 19-23, is reported in .... F. 2d .....

[1] See 70 LRRM 3071; 59 LC ¶13,366.

Jurisdiction.

The judgment of the Court of Appeals for the Ninth Circuit was entered on September 26, 1969 [R. Vol. One]; p. 23, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Question Presented.

Whether the United States District Courts have jurisdiction under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C., Section 185, to enjoin strikes and work stoppages by labor organizations in violation of the promises contained in their labor agreements with employers not to engage in strikes or work stoppages during the term of the agreement and to submit all disputes and grievances to arbitration, and whether Section 4 of the Norris-LaGuardia Act, 29 U.S.C., Section 104, should be held not to bar the issuance of such injunctions but should be accommodated with Section 301.

Whether the United States District Courts are compelled, after removal of an action from a State Court in which an injunction was granted against a labor organization, to dissolve such injunction because of the command of Section 4 of the Norris-LaGuardia Act.

Whether the decision of this Court in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962), should be overturned.

Statutes Involved.

The statutory provisions involved are Section 301 of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 156, 29 U.S.C., Section 185(a), and Section 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C., Section 104. They are printed in Appendix A, *infra*, pp. 1-3.

Statement of the Case.

This petition seeks review of a judgment of the Court of Appeals for the Ninth Circuit reversing an order of a District Court in a removed action enjoining a strike by Respondent Union pending arbitration of a collective bargaining dispute with Petitioner. Respondent engaged in a strike and work stoppage at one of Petitioner's retail food supermarkets. The applicable collective bargaining agreement required the submission of all disputes to arbitration and prohibited strikes and work stoppages.

Petitioner made application to the California Superior Court for a Temporary Restraining Order, which application was granted. The State Court action was then removed by Respondent to the United States District Court for the Central District of California, and a motion was made to quash the Temporary Restraining Order. This motion was denied. Petitioner's countermotion for specific performance of the agreement to arbitrate and for an injunction against the strike and work stoppage pending arbitration was granted by the District Court.

The jurisdiction of the District Court was invoked because the question arose under a law relating to commerce, the Labor-Management Relations Act of 1947, as amended, and under Section 301 thereof which grants District Courts jurisdiction of suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce.

Petitioner herein operates a chain of retail food supermarkets, and Respondent labor organization is the

collective bargaining representative of the retail clerks employed in certain of Petitioner's supermarkets.

The collective bargaining agreement between Petitioner and Respondent requires arbitration of "Any and all matters of controversy, dispute or disagreement of any kind or nature existing between the parties and arising out of or in any way involving the interpretation or application of the terms of this Agreement * * *" [R. 52; R. 113-114] and further provides that all matters subject to the arbitration agreement "* * * shall be settled and resolved in the manner provided herein", and that "during the term of this Agreement, there shall be no cessation or stoppage of work, lock-out, picketing or boycotts, * * *" [R. 3; R. 117].

During the term of the collective bargaining agreement, Petitioner and Respondent became engaged in a dispute concerning the performance of work in one of Respondent's supermarkets by non-bargaining unit employees. Respondent, contending that Petitioner had violated the contract, caused the employees of the store to cease performing their work and to engage in a strike, and Respondent established a picket line at the store in question.

Petitioner demanded arbitration of the dispute and a cessation of the strike, work stoppage and picketing. Upon Respondent's refusal, Petitioner obtained injunctive relief from the California Superior Court.[2] Respondent removed the action to the District Court under the authority of this Court's decision in *Avco Corp. v. Aero Lodge 735, I.A.M.*, 390 U.S. 557 (1968), and

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[2] *The Boys Markets, Inc. etc., plaintiff, v. Retail Clerks Union Local 770, etc., defendant,* Superior Court of the State of California for the County of Los Angeles No. 948323; R. 7-20.

immediately noticed a motion to quash the Temporary Restraining Order. Petitioner made a Motion For an Order Compelling Arbitration; For Specific Performance of Agreement to Arbitrate; and Application For a Preliminary Injunction [R. 81]. The District Court, finding that the dispute between Petitioner and Respondent was required to be submitted to arbitration under the labor agreement and that the strike, picketing and work stoppage was in breach of the contract, denied Respondent's motion to quash; ordered Petitioner and Respondent to arbitrate their dispute; and granted an injunction pending arbitration [R. 106-121]. Respondent was restrained from picketing Petitioner's supermarket; carrying signs stating employees were on strike; engaging in a strike or work stoppage; inducing Petitioner's employees to engage in a strike, work stoppage or picketing or inducing Petitioner's employees to refuse to perform their services; and from informing customers that the store was closed or from blocking ingress or egress of customers or employees of suppliers.

Upon appeal, the Court of Appeals for the Ninth Circuit, noting that this Court's decision in *Sinclair Refining Co. v. Samuel M. Atkinson*, 370 U.S. 195, was "nearly on all fours with the instant case", held that it was "bound by the holding of *Sinclair*" and reversed the judgment of the District Court enjoining the strike and remanded the case for further proceedings.

REASONS FOR GRANTING WRIT.

1. A re-examination of the Court's decision in *Sinclair Refining Co. v. Samuel M. Atkinson,* 370 U.S. 195, is compelled by the Court's more recent decision in *Avco Corp. v. Aero Lodge 735, I.A.M.,* 390 U.S. 557. The *Avco* decision resolved the fundamental question of the jurisdiction of the District Courts under Section 301 of the Labor-Management Relations Act of actions removed from State Courts in which the State Courts had exercised their traditional equity jurisdiction to enjoin strikes by labor organizations in breach of contracts with employers. That decision, however, left unresolved the question of the equity powers of the District Courts after removal of such actions. Another aspect of this issue was raised in *International Longshoremen's Association, Local 1291 v. Philadelphia Marine Trade Association,* 389 U.S. 64, but was not reached for the reason that the case was decided upon other grounds.

2. Since the decision in *Sinclair,* State Courts have continued to exercise equitable jurisdiction to enjoin strikes in violation of labor agreements, and it is fair to say the great majority of such actions for breach of contract have been filed in State Courts. Until the Court's decision in *Avco Corp.,* the lower Federal Courts were divided upon the question whether State Court injunction actions, after removal, should be remanded. Now that it is clear that the District Courts have general jurisdiction under Section 301 of removed injunction actions, it is imperative that the questions, whether the District Courts have original equity jurisdiction to enjoin strikes in breach of contract and whether they have such jurisdiction in removed actions, in which in-

junctive relief has been granted by State Courts, before removal, be finally resolved.

3. The decision in the *Sinclair* case is not in harmony with the federal law of labor relations that the District Courts are required to fashion by *Textile Workers of America v. Lincoln Mills of Alabama*, 353 U.S. 448, and which the State Courts are required to follow under this Court's decision in *Local 174, Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Lucas Flour Co.*, 369 U.S. 95. The federal law of labor relations is best effectuated by a labor agreement between an employer and a union which requires determination of disputes by private arbitration and under which strikes are absolutely prohibited, the arbitration agreement being the *quid pro quo* for the agreement not to strike.[3]

It is essential to the complete effectuation of the federal labor policy that every aspect of such agreements be specifically enforceable in the Courts, including the agreement not to strike as well as the agreement to arbitrate disputes. Under present law, all doubts must be resolved in favor of arbitration, even to the processing of frivolous claims; and the awards of arbitrators will be enforced by judgment of the Courts, even though the Courts might have interpreted the contract in question differently than did the arbitrator.[4]

The agreement to arbitrate is specifically enforceable, even though the promise not to strike has been violated

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[3]See *United Steel Workers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 at p. 578, Fn. 4.

[4]*United Steel Workers of America v. American Manufacturing Co.*, 363 U.S. 564; *United Steel Workers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574; *United Steel Workers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593.

by the union seeking arbitration. (*Drake Bakeries, Inc. v. American Bakery & Confectionery Workers International Local 50,* 370 U.S. 254). It would even appear that the Federal Courts may have equitable power to enforce the award of an arbitrator ordering a labor organization to cease and desist from a strike in violation of a contract even though such order would be tantamount to a mandatory injunction.[5]

The rationale of *Sinclair* cannot be reconciled with the policies reflected by these decisions, all of which emphasize the necessity for equal enforcement of the mutual promises of employers and labor organizations in collective bargaining agreements.

4. An injunction is the only efficacious and practical remedy for a strike in defiance of a "no-strike" provision in a collective bargaining agreement which by its terms requires submission to arbitration of the dispute causing the strike. The promise not to strike is the only substantial consideration received by an employer in return for the employer's agreements upon wages, benefits and other conditions of employment under the contract with the labor organization. Unless, in an appropriate case, the agreement not to strike may be swiftly enforced by the equitable remedy of injunctive relief, the consideration received by employers for their labor agreements is valueless and the promise not to strike is rendered meaningless.

Neither the arbitration procedure itself, which is inherently time-consuming, nor the future possibility of a court order enforcing a cease and desist award of

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[5]*New Orleans Steamship Assn. v. General Longshore Workers, ILA, Local Union No. 1418,* (CA-5 1968), 389 F. 2d 369, cert. den., 393 U.S. 828.

an arbitrator or, in fact, the possibility of a damage action at law, provide effective relief for the employer whose business has been shut down by a strike.

5. The policy of the promotion of industrial peace and the substitution of private arbitration for economic warfare can only be completely effectuated by an accommodation of Section 4 of the Norris-La Guardia Act with Section 301 of the Labor-Management Relations Act. The specific problems, which each of these statutes was enacted to remedy, are indeed entirely different. The abuses of the injunctive process which Congress sought to remedy by the enactment of the Norris-LaGuardia Act will not recur by mere reason of the restraint by Courts of strikes in violation of collective bargaining agreements.

Upon re-examination, the legislative history of Section 301 of the Labor-Management Relations Act of 1947 should not be held to preclude the interlacing of this statutory enactment with the Norris-LaGuardia Act. These statutes should not be read in isolation, one from the other, so that the Norris-LaGuardia Act prohibits the equal enforcement of labor-management contracts by equitable relief, as would otherwise be implicit under the provisions of Section 301 and the Congressional purposes underlying the enactment of this statute.

6. There is no logical basis upon which the judicial accommodation between the Norris-Laguardia Act and the Railway Labor Act, reached by this Court in *Brotherhood of Railway Trainmen v. Chicago River and Indiana Railway Co.*, 353 U.S. 30, and in other cases involving the issue under the Railway Labor Act, can be explained or compared with the *Sinclair* case.

If the Norris-LaGuardia Act is indeed a barrier to injunctive relief under Section 301, then it would appear that reason would dictate that that Act also should have barred such relief in "minor dispute" cases arising under the Railway Labor Act. But if it be granted that the *Virginia Railway Company v. System Federation No. 40,* 300 U.S. 515; *Graham v. Brotherhood of Locomotive Firemen,* 338 U.S. 232; *Brotherhood of Railway Trainmen v. Howard,* 343 U.S. 768, and the *Chicago River* cases were correctly decided, these cases would appear to support the ultimate determination that Section 4 of the Norris-LaGuardia Act does not prohibit the granting of injunctive or equitable relief under Section 301 of the Labor-Management Relations Act.

Conclusion.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOSEPH M. MCLAUGHLIN,
WILLIAM B. IRVIN,
Counsel for Petitioner, The Boys Markets, Inc.

APPENDIX A

Statutory Provisions Cited in Opinion

1. Section 301, Labor Management Relations Act of 1947, 29 U.S.C. §185.

§ 185. Suits by and against labor organizations.

Power, amount, and citizenship.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; suits for payment of and enforcement of money judgments.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Is the Norris-LaGuardia Act to be interpreted to bar injunctive relief under Section 301 even if it would appear that Congress would intend that that Act also should have barred such relief in "minor disputes" arising under the Railway Labor Act. But if it is granted that the *Virginian Railway Company* and *Pyrich* cases were not correctly decided, there still would appear to exist the ultimate determination that Section 4 of the Norris-LaGuardia Act does not prohibit the granting of injunctive or equitable relief under Section 301 of the Labor-Management Relations Act.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOSEPH M. MCLAUGHLIN,
WILLIAM D. IRVIN,
Counsel for Petitioner, The Stop Shirtail, Inc.

APPENDIX A.

Statutory Provisions Cited and Quoted.

1. Section 301, Labor-Management Relations Act of 1947, 29 U.S.C. §185:

§ 185. *Suits by and against labor organizations—Venue, amount, and citizenship*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgements

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, § 301, 61 Stat. 156.

2. Section 4, Norris-LaGuardia Act, 29 U.S.C. §104:

§ 104. *Enumeration of specific acts not subject to restraining orders or injunctions*

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from

doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or in prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70.

APPENDIX B.

Copies of Findings, Conclusions and Orders of United States District Court for the Central District of California.

Findings of Fact and Conclusions of Law.

United States District Court, Central District of California.

The Boys Markets, Inc., a California corporation, Plaintiff, vs Retail Clerks Union, Local 770, an unincorporated association, Defendant. Civil No. 69-337-CC.

This cause came on to be heard by the Court, the Honorable Charles H. Carr, United States District Judge Presiding, on the 10th day of March, 1969, on the motion of plaintiff for an order compelling arbitration; for specific performance of contract; and for injunction pending arbitration, and on the motion of defendant to quash the Temporary Restraining Order heretofore issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323, removed to this Court, and the Court having considered the verified complaint, declaration and memorandum of points and authorities filed by plaintiff in the State Court, the supplemental memorandum of points and authorities and motion filed by plaintiff herein, and the motion of defendant to quash the said Temporary Restraining Order and the memorandum of points and authorities of defendant, and having heard the argument of counsel, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. Plaintiff, The Boys Markets, Inc., is a corporation duly organized and existing under the laws of the State of California and owns and operates a chain of retail food supermarkets, one of which said supermarkets is located at 7230 Atlantic Boulevard in the City of Cudahy within this District. Plaintiff employs retail clerks in the said supermarket located at 7230 Atlantic Boulevard, Cudahy, California, who are represented for collective bargaining purposes by defendant.

2. Defendant, Retail Clerks Union Local 770, is an unincorporated association functioning as a labor organization, affiliated with the Retail Clerks International Association, AFL-CIO, being composed of several thousand members who are employed as retail clerks in supermarkets, drug stores, discount stores and other retail establishments who are represented for collective bargaining purposes by said labor organization with its principal offices located within this District.

3. Plaintiff and defendant executed and entered into a contract, in writing, known as "Retail Food, Bakery, Candy, and General Merchandise Agreement, April 1, 1964-March 31, 1969", which said contract provided for and established the wages, hours, benefits and conditions of employment for the employees of plaintiff employed as retail clerks in plaintiff's supermarket located at 7230 Atlantic Boulevard, Cudahy, California.

4. Article XIV of said contract, entitled "Adjustment And Arbitration" provides as follows:

"ARTICLE XIV

"ADJUSTMENT AND ARBITRATION

"A. CONTROVERSY, DISPUTE OR DISAGREEMENT. Any and all matters of con-

troversy, dispute or disagreement of any kind or character existing between the parties and arising out of or in any way involving the interpretation or application of the terms of this Agreement, except as may be otherwise provided in Paragraph D of this Article, shall be settled and resolved by the procedures and in the manner hereinafter set forth.

"B. ADJUSTMENT PROCEDURE.

"1. *Store Level.* The Union through its representatives shall attempt to settle or resolve any such matter with the appropriate store supervisor or person designated by the Employer in the manner indicated in Article X of this Agreement.

"2. *Meeting of Representatives.* Upon receipt of a written notice from either party, the representatives of the Employer and the representatives of the Union shall meet within a calendar week and attempt to settle or resolve the matter.

"3. *Food Employers Council, Inc.* The Union hereby recognizes the Food Employers Council, Inc. as the authorized representative of its members in matters pertaining to the negotiation and administration of this Agreement. In the event of a dispute, it shall be the duty of the Employer to notify the Food Employers Council, Inc. of the existing dispute if said Employer desires said Food Employers Council, Inc. to represent it in the dispute. Should a grievance or dispute be settled between the Union and any Employer signatory to this Agreement without the participation of the Food Employers Council, Inc. and if in such settlement, an interpretation of any language or phrase of this Agreement is involved in order that such

settlement be reached, the Union shall, within ten (10) days of such settlement notify Food Employers Council, Inc., in writing of the dispute, the language or the phrase interpreted, the settlement reached, and the date of such settlement. Should the Union fail to notify the Food Employers Council, Inc., as set forth above, the fact of settlement and the interpretation of the language or phrase of the Agreement involved in the settlement shall not be used in evidence for any purpose whatsoever. No such settlement or interpretation shall be binding upon the Food Employers Council, Inc. or its members unless the Council or its members thereof participated in arriving at such settlement or interpretation.

"C. ARBITRATION.

"1. Any matter not satisfactorily settled or resolved in Paragraph B hereinabove shall be submitted to arbitration for final determination upon written demand of either party. The written demand for arbitration may be made at any time after the expiration of fifteen (15) days from the date of the notice, submitting the matter under Paragraph B, subsection 2, hereinabove, to the meeting of representatives.

"2. The representatives of the Union and the representatives of the Employer shall meet for the purpose of selecting an impartial arbitrator within the ten (10) day period following the demand for arbitration. If no agreement upon an arbitrator is reached during this period, either party may then request a list of fifteen (15) persons qualified to act as arbitrators under this

Agreement, from the Federal Mediation and Conciliation Service and upon receipt of this list the parties shall immediately thereafter select the arbitrator by alternately striking names from the list until the last name remains. The parties shall draw lots to determine who shall make the first deletion from the list.

"3. Should either party desire, a board of arbitration shall be convened in lieu of a single arbitrator, consisting of an equal number of arbitrators appointed by each party (not to exceed two appointed by each) and the impartial arbitrator who shall be chairman. The board shall hear and determine the matter by majority vote of the members of the board.

"4. The arbitrator or board of arbitration shall be empowered to hear and determine the matter in question and the determination shall be final and binding upon the parties, subject only to their rights under law. The hearings shall be held within thirty (30) days after the selection of the arbitrator, or board, which shall have the power to decide the date or dates upon which the arbitration is to be held if agreement cannot be reached by the parties.

"D. POWERS, LIMITATIONS AND RESERVATIONS.

"1. *Arbitrator.* The arbitrator or board of arbitration shall not have the authority to decide questions involving the jurisdiction of any local, or of the International, or which may in any way affect or change the Union Security clause, nor shall the arbitrator or board of arbitration have

the authority to effect a change in, modify, or amend any of the provisions of this Agreement, or to make decisions on provisions covering wages or working conditions to be incorporated either in a new agreement or any subsequent annual agreement. If a question of the arbitrability of an issue is raised by either party, such question shall be determined in the first instance by the arbitrator or board. Neither party to this Agreement shall refuse to proceed to arbitration upon the grounds that the matter in question is not arbitrable.

"2. *Work Stoppages.* Matter subject to the procedures of this Article shall be settled and resolved in the manner provided herein. During the term of this Agreement, there shall be no cessation or stoppage of work, lock-out, picketing or boycotts, except that this limitation shall not be binding upon either party hereto if the other party refuses to perform any obligation under this Article or refuses or fails to abide by, accept or perform a decision or award of an arbitrator or board.

"3. *Wage Claims.* In the case of a direct wage claim or a claim for contributions to employee benefit plans which does not involve an interpretation of any of the provisions of this Agreement, either party may submit such claim for settlement to either the grievance procedure provided for herein or to any other tribunal or agency which is authorized and empowered to effect such a settlement.

"E. STATUS QUO. During the period of adjustment or arbitration as provided in this Article, the conditions in effect at the time of receipt of

written notice, specified in Paragraph C above, shall continue in effect pending final decision.

"F. EXPENSES. The expenses of the arbitrator shall be borne equally by both the Employer and the Union.

"G. TIME LIMITS. The time limits set forth above may be extended by mutual agreement between the parties.

"H. REPORTING DISCREPANCIES. It shall be the responsibility of the employee to report any claimed discrepancy to the Union promptly upon discovery, and it shall then become the responsibility of the Union to notify the Employer promptly of such claimed discrepancy. In any event, all complaints must be filed in writing within thirty (30) days after the matter in dispute or disagreement is first reported to the Union. Complaints not filed within the limits herein specified shall be deemed null and void."

5. Plaintiff and defendant became involved in a controversy, dispute and disagreement concerning the performance of certain work in plaintiff's supermarket located at 7230 Atlantic Boulevard, Cudahy, California, on Tuesday, February 18, 1969. Defendant objected to the method used by plaintiff in relocating certain merchandise within frozen food cases located in said store, and defendant demanded that plaintiff require employees represented by defendant to remove all merchandise from said frozen food cases, return said merchandise to the main freezer in the backroom of the store and thereafter restock all of said merchandise in the said frozen food cases. Defendant threatened that unless plaintiff

agreed to such demands, defendant would cause a strike and work stoppage against plaintiff.

6. Plaintiff refused to agree to the demands made by defendant. Thereafter, on February 18, 1969, defendant and its representatives ordered, instructed and required all of the retail clerks employed by plaintiff in said store to leave their employment to engage in a strike and work stoppage against plaintiff. Plaintiff's employees, acting under and pursuant to defendant's instructions, ceased to perform their work for plaintiff and engaged in a strike and work stoppage against plaintiff. Defendant established a picket line on and about the premises of plaintiff's store, and defendant's pickets carried signs reading,

"LOCAL 770
THIS STORE ON STRIKE
PLEASE RESPECT OUR PICKET LINES"

Said strike, work stoppage and picketing continued until defendant was served with a Temporary Restraining Order issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323.

7. On February 18, 1969, plaintiff caused a telegram to be sent to defendant demanding that the dispute be submitted to arbitration and that defendant cease and desist from the strike and work stoppage. Defendant failed and refused to agree to arbitrate the said dispute or to end its strike, picketing and work stoppage.

8. Unless defendant is enjoined and restrained from continuing to engage in the strike, picketing and work stoppage, it may be reasonably expected that plaintiff will suffer substantial and serious loss of business and

customer patronage to plaintiff's substantial and irreparable injury and damage in excess of such damage as plaintiff may have already suffered, and greater injury will be inflicted upon plaintiff by the denial of relief than will be inflicted upon defendant by the granting of such relief.

9. It is impossible for plaintiff to ascertain the exact amount of damage and injury which plaintiff will sustain if defendant and its members are not enjoined from committing such acts, and plaintiff has no adequate remedy at law.

CONCLUSIONS OF LAW

1. Plaintiff and defendant are parties to a valid existing collective bargaining agreement, in writing, effective through March 31, 1969, which by its terms requires that any and all matters of controversy, dispute or diagreement of any kind or character existing between the parties and arising out of or in any way involving the interpretation or application of the terms of said contract shall be submitted to arbitration for final and binding determination of the merits of such controversy, dispute or disagreement, and which contract further provides that defendant and its members shall not engage in any cessation or stoppage of work or picketing by reason of any matter subject to the arbitration procedures of the contract.

2. During the term of said contract, plaintiff and defendant became engaged in a controversy, dispute or disagreement concerning the stocking of frozen food cases at plaintiff's store located at 7230 Atlantic Boulevard, Cudahy, California. Said controversy, dispute or disagreement was of a type and character required by

the terms of the said contract to be submitted to arbitration for final and binding determination.

3. Defendant, and members of defendant employed by plaintiff, engaged in a strike, picketing and work stoppage commencing on February 18, 1969, in substantial and material breach and violation of the contract between plaintiff and defendant.

4. Plaintiff has no plain, speedy or adequate remedy at law.

5. The Court has jurisdiction over plaintiff's cause and the relief sought thereunder by plaintiff under the provisions of Title 29, United States Code, Section 185.

6. Plaintiff's motion for an order compelling defendant to arbitrate the said controversy, dispute or disagreement must be granted.

7. Plaintiff's motion and application for injunction enjoining and restraining defendant and its members from engaging in a strike, picketing and work stoppage at plaintiff's store located at 7230 Atlantic Boulevard, Cudahy, California, pending submission of the aforesaid controversy, dispute or disagreement to arbitration, must be granted.

8. Defendant's motion to quash the Temporary Restraining Order, issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323, must be denied.

Dated: March 12, 1969.

/s/ Charles H. Carr
United States District Judge

Approved as to form: Arnold, Smith & Schwartz By /s/ ROBERT M. DOHRMANN Attorneys for Defendant.

Order Directing That Arbitration Proceed and Order Granting Injunction Pending Arbitration.

United States District Court, Central District of California.

The Boys Markets, Inc., a California corporation, Plaintiff, vs Retail Clerks Union, Local 770, an unincorporated association, Defendant. Civil No. 69-337-CC.

This cause came on to be heard by the Court, the Honorable Charles H. Carr, United States District Judge Presiding, on the 10th day of March, 1969, on the motion of plaintiff for an order compelling arbitration; for specific performance of contract; and for injunction pending arbitration, and on the motion of defendant to quash the Temporary Restraining Order heretofore issued by the Superior Court of the State of California for the County of Los Angeles in Case No. 948323, said action having been removed to this Court. Plaintiff, appearing by its counsel, Law Offices of Joseph M. McLaughlin, by William B. Irvin, Esq., and defendant appearing by its counsel, Arnold, Smith & Schwartz, by Gerald A. W. Haight, Esq. The Court having considered the verified complaint of plaintiff, declaration, memorandum of points and authorities filed by plaintiff in the State Court, the supplemental memorandum of points and authorities and motion filed by plaintiff herein and the motion of defendant to quash the said Temporary Restraining Order and the memorandum of points and authorities of defendant, and having heard the argument of counsel, and it appearing to the Court after due deliberation that plaintiff and defendant are parties to a valid and existing collective bargaining agreement in writing; that said contract requires that any and all matters of controversy, dispute and disagree-

ment of any kind or character existing between the parties and arising out of or in any way involving the interpretation or application of the terms of said contract shall be submitted to final and binding arbitration; that defendant under and pursuant to the terms and provisions of said contract promised, covenanted and agreed that the Union and its members, employees of plaintiff, would not engage in any strike, work stoppage or other concerted activity against plaintiff upon or by reason of any controversy, dispute or disagreement required by said contract to be submitted to arbitration; that plaintiff and defendant are engaged in a controversy, dispute or disagreement arising out of and involving the interpretation or application of the provisions of their said contract relating to the performance of certain work within plaintiff's store, and that said controversy, dispute or disagreement is of the kind or character required by the said contract to be submitted to an impartial arbitrator for binding determination; that defendant, in breach of the terms and provisions of its said contract, engaged in a strike against plaintiff and induced, encouraged and persuaded plaintiff's employees to cease performing their work for plaintiff and to engage in a strike and work stoppage, and that by reason of the acts committed by defendant, plaintiff has suffered irreparable injury and will continue to suffer irreparable injury unless defendant is enjoined and restrained from committing the said acts.

It further appearing to the Court that the Court has jurisdiction of the subject matter of the action and to grant the relief sought by plaintiff under Title 29, United States Code, Section 185, and good cause appearing therefor:

IT IS ORDERED that the controversy, dispute or disagreement between plaintiff and defendant relating to or concerning the performance of work in and upon the frozen food display cases in plaintiff's market located at 7230 Atlantic Boulevard, Cudahy, California, be submitted to arbitration in accordance with the terms and provisions of Article XIV of the contract between plaintiff and defendant, known as "Retail Food, Bakery, Candy, and General Merchandise Agreement, April 1, 1964—March 31, 1969", and that plaintiff and defendant proceed with diligence so that said arbitration shall be completed and the decision and award of the arbitrator rendered within sixty (60) days of the date of this order or within such further time as may be necessarily required under the circumstances.

IT IS FURTHER ORDERED that defendant, its officers, agents, representatives, members, employees, and each of them, and all persons acting in aid or in concert with defendant, be and they hereby are enjoined and restrained, pending the decision and award of the impartial arbitrator, from doing or attempting to do, or threatening to do, and from causing to be done, either directly or indirectly, by any means, method or device whatsoever, any and all of the following acts in connection with, related to or in furtherance of a strike or work stoppage against plaintiff involving the pending dispute as to the stocking of frozen foods:

(a) Picketing at, around or in the vicinity of the premises of plaintiff's retail supermarket located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, State of California, or any other supermarket of plaintiff.

(b) Carrying or displaying signs or placards which state in any manner that plaintiff's employees are on strike or requesting in any manner customers or potential customers not to patronize plaintiff or its supermarkets, or which, in any manner, infer that a strike or labor dispute against or involving plaintiff is in progress.

(c) Engaging in any strike, concerted work stoppage or other economic activity at or about the premises of plaintiff's retail store located at 7230 Atlantic Boulevard in the City of Cudahy, County of Los Angeles, California, or at any other supermarket of plaintiff.

(d) Inducing, instructing, persuading or encouraging plaintiff's employees, or any of them, to engage in a strike, work stoppage, picketing or other economic activity against plaintiff or to fail or refuse to perform their work and services in a regular and normal manner for plaintiff.

(e) From stating to or informing customers or potential customers of plaintiff that plaintiff's employees are on strike or that plaintiff's store at 7230 Atlantic Boulevard in Cudahy, California, is closed or that there is no service in plaintiff's food store or from in any manner persuading, inducing or encouraging or attempting to persuade, induce or encourage plaintiff's customers or potential customers not to patronize plaintiff or to patronize plaintiff's competitors.

(f) From blocking, obstructing or impeding or attempting to block, obstruct or impede the ingress or egress of customers and potential customers to and from plaintiffs said store or at any other supermarket of plaintiff.

(g) From intimidating, inducing, persuading or encouraging or attempting to intimidate, induce, persuade or encourage employees of suppliers of plaintiff to refuse to deliver goods and merchandise to plaintiff's said store.

The foregoing Order for Injunction shall be effective when plaintiff has given security in the sum of $1,000.00 corporate surety bond.

IT IS FURTHER ORDERED that defendant's motion to quash Superior Court Temporary Restraining Order be and hereby is denied.

Dated: March 12, 1969.

/s/ Charles H. Carr
United States District Judge

Approved as to Form: Arnold, Smith & Schwartz By /s/ Robert M. Dohrmann, Attorneys for Defendant.

APPENDIX C.

Copies of Opinion and Judgment of United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals, for the Ninth Circuit.

The Boys Markets, Inc., *Appellee*, vs. Retail Clerk's Union, Local 770, *Appellant*. No. 24,004.

[September 26, 1969]

Appeal from the United States District Court for the Central District of California.

Before: HAMLIN and DUNIWAY, Circuit Judges, and SMITH, District Judge*

HAMLIN, Circuit Judge

The Boys Markets, Inc., appellee herein, filed an action in California state court against the Retail Clerk's Union, Local 770, appellant herein, seeking to enjoin a strike being carried on by appellant against appellee and seeking an order for specific performance of an agreement to arbitrate. Appellant and appellee had prior thereto entered into a collective bargaining agreement which provided for arbitration of all disputes involving the interpretation of the agreement and which also contained a promise by appellant not to engage in any strike or work stoppage or any other concerted economic activity. This agreement was in effect at the time the strike was called by the appellant.

The California court issued a temporary injunction restraining the Union from striking. The Union then removed the case to the United States District Court for

*Honorable Russell E. Smith, United States District Judge, Missoula, Montana, sitting by designation.

the Central District of California, and sought to quash the injunction. After a hearing the district court issued its order enjoining the Union from striking and ordered the parties to arbitrate the dispute which had given rise to the strike. The Union appealed to this court from the district court's order. We have jurisdiction under 28 U.S.C. § 1291.

This case involves the interplay of two of the major statutes in the area of labor law, section 4 of the Norris-LaGuardia Act (29 U.S.C. §104) and section 301 of the Labor-Management Relations Act (29 U.S.C. § 185). Section 301 provides:

> "Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States.

The landmark *Lincoln Mills* decision, 353 U.S. 448 (1957), held that section 301 was not merely procedural, but rather it gave to the federal courts power to establish a body of substantive federal law. A normal adjunct of federal power, of course, is the equitable remedy of an injunction.

However, section 4 of the Norris-LaGuardia Act deprives the federal courts of jurisdiction to issue injunctions against strikes or work stoppages in most cases growing out of a labor dispute. The strike action taken by the Union in the instant case falls squarely within the proscription of section 4; this much is conceded by the appellee. The appellee's contention, which was upheld by the court below, is that section 4 does not forbid a federal court to issue an injunction where the union strike is in violation of a no-strike clause. Thus, the sole question on this appeal is whether the court

below had jurisdiction to enjoin a strike where that strike is in violation of a no-strike clause.

This question has previously been answered in favor of the Union by the Supreme Court in *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962). *Sinclair* is nearly on all fours with the instant case: the employer there was attempting to enjoin a union strike where the union struck in violation of a no-strike clause. Many of the policy arguments presented by the appellee in this case were addressed to the Court in *Sinclair.* However, the Court held that it was bound by the clear language of section 4 of the Norris-LaGuardia Act, and that a federal court does not have power to enjoin a strike in most cases growing out of a labor dispute, even where that strike is in violation of a no-strike clause. See also. *A. H. Bull Steamship Co. v. Seafarers' International Union,* 250 F.2d 326 (2nd Cir. 1957); *General Electric Co. v. Local Union 191,* .... F.2d ...., 71 LRRM 2903, (5th Cir. 1969).

We see nothing in *Avco Corp. v. Aero Lodge No. 735,* 390 U.S. 557 (1968), relied on by appellee, which would permit us not to follow the holding in *Sinclair.* The question decided in *Avco* was whether, after the union has petitioned for removal of an action brought by the employer in state court, the employer can remand the case to state court. The Court held that the employer could not remand the case to state court. The underlying facts of the dispute in *Avco* were very similar to the facts in *Sinclair* and the instant case, but the Court

reserved consideration of the *Sinclair* question. This court therefore remains bound by the holding of *Sinclair*.[1]

Appellee's reliance upon *International Longshoremen's Assn. Local 1291 v. Philadelphia Marine Trade Assn.*, 389 U.S. 64 (1968), and *New Orleans Steamship Assn. v. General Longshore Workers*, 389 F.2d 369 (5th Cir.), cert. denied, 393 U.S. 828 (1968), is misplaced. In each of these cases the order of the court was made after an arbitration award had been made. In the *Philadelphia Marine* case, the complaint had alleged that the union had refused "to abide by the terms of the arbitrator's award" and prayed for an order enforcing the arbitrator's award. In that case the Supreme Court set aside the order of the district court enforcing the award as being too vague.

In the *New Orleans Steamship Association* case, an arbitration award had been made and the action was by the Steamship Association seeking an order to enforce the award of the arbitrator. The court of appeals held that the district court had jurisdiction to enforce the award and that it erred in dismissing the complaint.

In the instant case no arbitration award has been made, and the *Sinclair* case is controlling. Accordingly, we reverse the judgment of the district court enjoining appellant's strike and remand the case for further proceedings.

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[1]It is worthy of note that although the Supreme Court in *Sinclair* made it clear that Congress alone could change the result reached by the Court in that case, Congress has not yet seen fit to do so.

Judgment.

United States Court of Appeals, for the Ninth Circuit.

The Boys Markets, Inc., Appellee, vs. Retail Clerk's Union, Local 770, Appellant. No. 24004.

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and that this cause be and hereby is remanded to the said District Court for further proceedings in accordance with the opinion of this Court.

Filed and entered September 26, 1969.